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NO. 84-511

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

Transcon Lines,

Petitioner,

vs.

Manchester Products Company,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit.

RESPONSE TO PETITION FOR
WRIT OF CERTIORARI.

DANIEL L. RAISKIN
STEVEN J. REVITZ
2049 Century Park East
Suite 2400
Los Angeles, California
90067
(213) 557-3040
Attorney for Respondent

34pp

QUESTIONS PRESENTED FOR REVIEW

Respondent disputes Petitioner's contention that the question presented to this Court is whether a promise by a regulated motor common carrier operating in interstate commerce to "automatically" honor claims of damage submitted to it by a shipper is a lawful and enforceable agreement. Instead, Respondent believes the questions are: (1) whether a promise by such a carrier does not reject or compromise such claims within a reasonable period of time is lawful; and (2) whether a promise to pay all properly filed claims of less than $100 because it is less expensive to do so than to investigate said claim is lawful.

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STATEMENT OF THE CASE

Petitioner is a common carrier by motor vehicle and subject to the rules and regulations of the Interstate Commerce Commission. Respondent is a corporation engaged in the manufacture of plastic extrusion products.

Between the approximate dates of October 1, 1981 and February 8, 1982, Petitioner transported various items of Respondent's goods by motor vehicles moving in interstate commerce. The agreed charges for these services was the sum of $18,980.08.

Respondent claims that its goods suffered damages in connection with a number of different shipments. Respondent submitted 71 claims of $100 or less to Petitioner in connection with said damages. These claims totalled $3,782.13. Respondent submitted 53

claims exceeding $100 in connection with these damages which totalled $14,872.30. After deduction for certain credits, the total amount of these claims (collectively the "Claims") was $18,245.03.

The evidence was uncontradicted that all of Respondent's claims were timely filed and contained all of the information Petitioner needed in order to assess said claims. Notwithstanding the foregoing, and the fact that Petitioner had agreed with Respondent that it would: automatically honor any claim under $100 made by Respondent for damages to Respondent's goods caused by Petitioner; investigate any claim exceeding $100; and assume responsibility for any claim it did not deny within a reasonable period of time, Petitioner did not pay, decline to pay, make a firm compromise settlement offer or respond in any

other way to any of the Claims.

The trial and appellate courts found that the Interstate Commerce Commission has promulgated regulations (the "Regulations") to govern the processing of claims for loss, damages, injury or delay to property transported in interstate commerce by common carriers and that the Regulations required Petitioner to acknowledge the receipt of proper claims and promptly investigate them. The Regulations also require the carrier to "pay, decline, or make a firm compromise settlement offer in writing to the claimant within 120 days after receipt of the claim by the carrier. . . "

The lower courts also found that Petitioner's agreement with regard to assuming responsibility for investigating the Claims and honoring them if it failed to investigate and deny them

within a reasonable period of time (the "Claims Agreement") was consistent with the Regulations. Because Petitioner had failed to perform any of the functions required of it both by the Claims Agreement and by the Regulations, and since Respondent evidenced that the Claims totalled $18,245.03, the trial court held that Respondent was entitled to recover damages in said amount against Petitioner and the Court of Appeal affirmed.

ARGUMENT

THE CLAIMS AGREEMENT IS ENFORCEABLE.

As previously stated, the Claims Agreement provided that Petitioner would honor any claim under $100 made by Respondent for damages to its goods carried by Petitioner and that Petitioner would investigate any damage claim exceeding $100 and, if it failed to deny

liability for such claim within a reasonable period of time, it would assume responsibility for the claim. For the reasons stated hereinafter, which constituted the basis for the lower courts' judgments, the procedure with regard to the claims in excess of $100 was compatible with the Regulations.

The Regulations are codified at 49 C.F.R. 1005 (1982). The regulations provide, in relevant part:

"Each carrier shall, upon receipt in writing. . .of a proper claim in the manner described in the regulations, acknowledge the receipt of such claim in writing or electronically to the claimant within 30 days after the date of its receipt by the carrier unless the carrier shall have paid or declined such claim in writing or electronically within 30 days of the receipt thereof. The

carrier shall indicate in its acknowledgment what, if any, additional documentary evidence or other pertinent information may be required by it further to process the claim as its preliminary examination of the claim, as filed, may have revealed." (Section 1005.3(a).)

"Prompt Investigation Required. Each claim filed against a carrier in the manner prescribed herein shall be promptly and thoroughly investigated if investigation has not already been made prior to receipt of the claim." (Section 1005.4(a).)

"Each carrier subject to the interstate commerce act which receives a written or electronically transmitted claim for loss or damage to baggage or for loss, damage, injury, or delay to property transported shall pay, decline, or make a firm compromise settlement of-

fer in writing or electronically to the claimant within 120 days after receipt of the claim by the carrier; provided, however, that if the claim cannot be processed and disposed of within 120 days after the receipt thereof, the carrier shall at that time and at the expiration of each succeeding 60-day period while the claim remains pending, advise the claimant in writing or electronically of the status of the claim and the reason for the delay in making final disposition thereof . . . " (Section 1005.5(a) [emphasis added].)

As evidenced above, Section 1005.5(a) of the Regulations requires a carrier to pay, decline or make a firm compromise settlement offer in writing within 120 days after receipt of the claim unless it extends the time to do so (which Petitioner did not do in this

case). Under the Claims Agreement, Petitioner agreed that, if it did not investigate and decline a claim within a reasonable period of time (which was never evidenced to be anything less than 120 days), Petitioner would honor the claim. This was precisely Petitioner's obligation under Section 1005.5 with the exception that the Claims Agreement did not provide for a compromise of a claim but Petitioner could have easily partook of this provision by declining to pay a claim in the amount requested and then offering to pay in a lesser amount.

The evidence at trial was clear that Respondent had, as of December, 1981, presented all of the Claims to Petitioner, a finding which Petitioner did not dispute on appeal. The trial court further found that, as of the date of the trial (May 13, 1983), Petitioner

had not paid, declined to pay, made a firm compromise settlement offer or responded in any other way to any of the Claims. Thus, since Petitioner had not declined to pay or make any offer to compromise any of the Claims within 120 days after they were made and Petitioner had not sought to extend the time for doing so, pursuant to Section 1005.5(a) of the Regulations, Petitioner's only remaining alternative was to pay the Claims.

This clearly applies with regard to all of the Claims over $100. It is submitted that it also applies to all of the claims of $100 or less because Petitioner never declined to pay nor did it offer to compromise any of these claims.

Based upon the foregoing, the Claims Agreement, which was consistent

with the Regulations, could hardly constitute an illegal rebate. Furthermore, and for the following reasons, it is submitted that, even if the Regulations were not in existence to sanction the Claims Agreement, the Claims Agreement would still not constitute an illegal rebate because Petitioner's damage claims policies had nothing to do with the rates that Respondent was charged for the shipping services provided to it by Petitioner.

PETITIONER DID NOT MEET ITS BURDEN OF EVIDENCING THAT THE CLAIMS AGREMEENT WAS ILLEGAL.

In support of its contention that its own policies for handling the Claims constituted an illegal rebate, Petitioner cites 49 U.S.C. 10761(a) which provides:

"Except as provided in this subtitle, a carrier providing transportation or service subject to the jurisidiction of the Interstate Commerce Commission . . . shall provide that transportation or service only if the rate for the transportation or service is contained on a tariff that is in effect under this subchapter. That carrier may not charge or receive a different compensation for that transportation or service than the rate specified in the tariff whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of the transportation or service, or another device." (49 U.S.C. 10761(a).)

Whenever a violation of any section of the Interstate Commerce Act is charged, the burden of proof is on

the complainant. (Chamber of Commerce of Fargo, N.D. vs. United States, 276 F.Supp. 301, 306 (1967).) In order to meet this burden, the complainant must evidence the "concession or discrimination" which deviates from a determined standard and this is usually done by showing a departure from the treatment normally accorded other shippers by the carrier involved. (See Continental Shippers' Assn. vs. United States, 328 F.2d 966, 968 (9th Cir. 1964).)

In the case at bar, Petitioner totally failed to meet this burden because it did not offer any evidence that Respondent was receiving any favorable treatment or was being dealt with in a manner in any way different from any other shipper. Consequently, since there was no evidence that Petitioner's policies concerning the processing of

the Claims deviated from the way any other shipper's damage claims were handled, Petitioner has failed to establish any violation of 49 U.S.C. 10761(a).

In this regard, the Court's attention is invited to the case of American Sugar Refining Co. vs. Delaware, L. & W. R. Co., 207 F. 733, 742 (C.C.A. N.J.) where the court stated that a rebate, as that term is used in the Interstate Commerce Act and its amendments, refers only to such a discount, deduction or drawback as creates discrimination in favor of a particular shipper and against other shippers in like situation and destroys the quality of treatment in rates which is the great purpose of the law to enforce.

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PETITIONER'S POLICIES FOR HANDLING RESPONDENT'S CLAIMS DID NOT CONSTITUTE AN ILLEGAL REBATE BECAUSE SAID POLICIES DID NOT AFFECT THE RATES RESPONDENT WAS CHARGED FOR PETITIONER'S SERVICES.

As set forth in 49 U.S.C. 10761(a) cited above, that statute is concerned with "rates" charged for shipping services. In this case, there is no claim or evidence that Petitioner charged Respondent a rate for its shipping services which was other than a published tariff rate or that the compensation for Petitioner's services was different from that charged to any other person or company for like and contemporaneous services. In fact, the disputed issues in this case have nothing to do with rates or compensation but, instead, damage claims.

Since the evidence at trial

was undisputed that Respondent paid its customers for all of the Claims, it is clear that Respondent, by prevailing on the Claims, did not obtain a favorable rate for Petitioner's services. Instead, the net effect was that Respondent paid the full price for Petitioner's services and was recompensed only for the amount that it had actually paid to its customers for damages caused by Petitioner.

It is submitted that this result is in accord with the express purpose of the Carmack Amendment to the Interstate Commerce Act (49 U.S.C. 20 (11)) which provides:

"Any common carrier . . . or transportation company subject to the provisions of this chapter receiving property for transportation from a point in one State . . . to a point in another

State . . . shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier. . . or transportation company to which such property may be delivered . . . and no contract, receipt, rule, regulation or other limitation of any character whatsoever shall exempt such common carrier. . . or transportation company from the liability imposed . . . ." (Emphasis added.)

Thus, in Missouri Pacific Ry. Co. vs. Harper Bros., 201 F. 671, 674-675 (7th Cir. 1912), the court stated that neither the common law nor the Carmack Amendment made illegal or invalid any contract fairly entered into fixing the amount for which the carrier would be liable in case of loss of property.

With regard to Petitioner's policy of automatically satisfying all

claims under $100, this was nothing more than a contract fairly entered into fixing the amount for which Petitoner would be liable in the case of the loss of property. From a business standpoint, this agreement was fair and reasonable to all concerned, especially Petitioner, since it would have cost more than $100 each to investigate these claims. Consequently, this agreement was not violative of the Interstate Commerce Act as evidenced by the case of Shaw Warehouse Co. vs. Southern Ry. Co., 288 F.2d 759, 774 (5th Cir. 1961) where the court held that the Interstate Commerce Act condemns only "undue or unreasonable" concessions and "the statutory test . . . is one of reasonableness."

Obviously, it is reasonable for a common carrier to agree to automatically settle claims of a certain

amount when it would cost more than that amount to investigate those claims. So long as there is no indication that the claims are being fraudulently made, and that certainly is not the situation in this case since Respondent had already paid these claims, Respondent could hardly be receiving any form of compensation which effectively reduced the rate of its shipping costs. In this regard, the Court's attention is invited to the case of Cooper-Jarrett Inc. vs. United States, 226 F.Supp. 318 (W.D. Mis. 1964) where the court held that, where rates are compensatory, they "cannot be said to be destructive merely because of their lowness."

Another case which supports the propriety of Petitioner's policies for handling Respondent's claims for damages is Hopper Paper Co. vs. Baltimore

& O.R. Co., 178 F.2d 179 (7th Cir. 1949) where the court held that a shipper's claims against the carrier for damages should not be prevented because the shipper failed to submit a written claim, as required by the bill of lading, because the carrier had oral notice of the claim. In rejecting the carrier's argument that, to allow such claims would constitute illegal discrimination in favor of the shipper, the court stated:

"In the instant case it is undisputed that defendant and its agents were fully aware and cognizant of the existence of all defects concerning the wreck and destruction of the carload of paper. In such a situation a formal notice by plaintiff to the defendant could not have accomplished anything more. Hence, we conclude that the carrier may not use

the provisions of the bill of lading to shield itself from the liability imposed upon it by the statute and common law for its negligent destruction of the shipper's property. . .

"One other matter requires but a few words. The defendant makes a point that to affirm the judgment 'would open the doors to the possibility of widespread discrimination which was the principal evil at which the Interstate Commerce Act was aimed.' The argument is 'to place within the power of the carrier the ability to favor any one shipper over others' would be discrimination and a violation of the Act. 'As to favored shippers, the carrier would need only to admit that it knew of the loss.'

"Concededly, one of the principal evils at which the Act was aimed was

discrimination by carriers. . . . But permitting knowledge to supply the written notice is not discrimination, nor is it a preference in favor of a particular shipper at the expense of the other. It is a mode of proof applicable alike to all railroads and in favor of all shippers. . . ."

See also City of New Orleans vs. Hansen & Tidemann, Inc., 391 F. Supp. 910, 918 (E.D. La. 1972) where the court held that an agreement to pay demurrage "would lack the discriminatory aspect characteristic of a rebate."

As to Petitioner's contention that it is illegal for a shipper to offset damages against a carrier, it is submitted that this is just not so and authority for this proposition is Hoover Motor Express Co. vs. United States, 262 F.2d 832, 833 (6th Cir. 1959).

Petitioner relies heavily on the case of United States vs. Satuloff Bros., 79 F.2d 846 (2d Cir. 1935) for the proposition that its own policies with regard to the processing the Claims constituted an illegal rebate. However, the Satuloff case, a criminal action, is clearly distinguishable from the matter at bar. In Satuloff, the defendants/appellants were charged with knowingly making a false claim for the loss of part of a carload of turkeys which one of the defendants/appellants had surreptitiously removed from a carload consigned to them. This was done when no representative of the railroad company, which was carrying the turkeys, was present. The corporate defendant/appellant, through the individual defendant/appellant, brought an action on said claim which was the basis for

the indictment which was the subject of the Satuloff case. (79 F. 847.)

In holding that the indictment against the defendants/appellants for violation of the Elkins Act was proper, the appellate court stated, in relevant part:

"Here the record shows that an officer of the appellants, the individual appellant, actually participated in the removal of the turkeys. He had complete charge of the claim department and himself prepared and signed the claim. Knowledge existed with and through him in the corporation in which he was an officer. This indictment sufficiently stated an offense of receiving a rebate under section 41. . ."

In the case at bar, there not only was a total absence of any evidence that Respondent filed any false claims,

but the evidence to the contrary was uncontradicted; i.e., that Respondent filed only legitimate claims and it personally satisfied all of these claims out of its own pocket. Therefore, there was not only an absence of criminal conduct, but a total absence of any benefit to Respondent since it only sought to be made whole, not to receive a benefit which would effectively reduce its shipping costs. Consequently, it is submitted that the Satuloff case is not only not dispositive, it is irrelevant.

IV

CONCLUSION.

The Carmack Amendment was enacted in order to protect the rights of shippers for damages to their goods caused during transit. This was accomplished by codifying the common-law rule

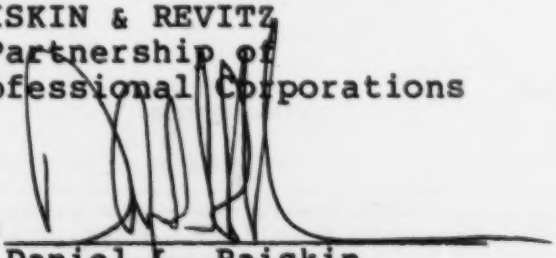
making a carrier liable, without negligence, for all damage to the goods transported by it, unless it affirmatively shows that the damage was occasioned by the shipper, acts of God, a public enemy, a public authority or the inherent vice or nature of the commodity. (Secretary of Agriculture v. United States, 350 U.S. 162, 165, 76 S.Ct. 244, 100 L.Ed. 173, (1955).)

With this background in mind, the parties entered into an agreement pursuant to which Petitioner promised that it would honor any claim of Respondent amounting to $100 or less and would timely investigate any claim in excess of that amount and either deny liability for such claim within a reasonable period of time or pay it. This was not only in accordance with the Regulations, but a recapitulation of them. However,

satisfy its statutory obligations as imposed by the Regulations. Consequently, it is submitted that the trial and appellate courts were correct in requiring Petitioner to honor the Claims and the subject Petition should be denied.

Respectfully submitted

RAISKIN & REVITZ
A Partnership of
Professional Corporations

By: 
Daniel L. Raiskin
Attorneys for Respondent,
MANCHESTER PRODUCTS COMPANY

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing _____

_____ and know its contents.

☒ CHECK APPLICABLE PARAGRAPH

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner _____ ☐ a _____ of _____

_____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____

a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on _____, 19___, at _____ California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ _____

Type or Print Name Signature

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT

(other than summons and complaint)

Received copy of document described as _____

_____

on _____ 19___.

_____ _____

Type or Print Name Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is: 2049 Century Park East, Suite 2400, Los Angeles, Ca. 90067

On Nov. 5, 1984, I served the foregoing document described as RESPONSE TO PETITION FOR WRIT OF CERTIORARI

_____ on the interested parties

in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Christopher Ashworth, Esq.
1925 Century Park East,
Suite 1250
Los Angeles, California 90067

☒ (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.

Executed on November 5, 1984, at Los Angeles, California.

☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

Executed on _____, 19___, at _____, California.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

CAROL KERKIS

Type or Print Name

Signature

STUART'S EBROOK TYPESAVER REVISED 6-83

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